

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

IN RE: ASHLEY MADISON CUSTOMER  
DATA SECURITY BREACH LITIGATION

This Document Relates to:

ALL CASES

MDL No. 2669

Case No. 4:15-MD-02669-JAR

**AMENDED DECLARATION OF RIZWAN JIWAN**

I, Rizwan Jiwan, hereby declare as follows:

1. From 2009 to 2016, I held various positions at Avid Life Media Inc. (“Avid Life Media”).<sup>\*</sup> In 2009, I was Vice President of Product Marketing at Avid Life Media. I held this position until September 2011. From September 2011 to July 2013, I was Avid Life Media’s Vice President of Product Marketing and Operations. From July 2013 to May 2016, I was Avid Life Media’s Chief Operating Officer. Since May 2016, I have continued to work with Avid Life Media as a consultant.

2. I provide this declaration in support of Avid Dating Life Inc.’s and Avid Life Media’s (together, “Avid”) Motion to Dismiss or Stay and to Compel Arbitration. I am familiar with the facts set forth herein based upon my personal knowledge and review of Avid’s business records. I am a resident of Toronto, Canada and I am over 18 years old.

3. Avid Dating Life is a wholly owned subsidiary of Avid Life Media. Both Avid Dating Life and Avid Life Media are organized under Canadian law and have headquarters and principal places of business in Toronto, Canada. Since 2007, Avid Dating Life has operated AshleyMadison.com, an online dating website (“Ashley Madison” or the “Website”).

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<sup>\*</sup> On July 12, 2016, Avid Life Media announced that it would be renamed ruby Corp. To avoid confusion, I refer to Avid Life Media and Avid Dating Life herein.

4. Through my roles at Avid, I have knowledge of and information regarding the Website's users and their activity on the Website. I also have knowledge of and information regarding the process for registration on the Website and the "Terms and Conditions" for use of the Website.

### **Plaintiffs' Ashley Madison Accounts**

5. Based on information produced in this action to Avid by the Plaintiffs, Avid's business records show that each Plaintiff created one or more accounts on the Ashley Madison Website between 2005 and 2015. The chart attached hereto as **Exhibit A** identifies each Plaintiff's most recent account by account number, username, the date the account was created, the form of the registration page used during the time when the account was created, and the date the account was last logged into.

### **The Account Registration Process**

6. Each of the Plaintiffs was required to agree to the Terms and Conditions before registering one or more accounts on the website. And it was not possible for Plaintiffs to create these accounts and use the website without first agreeing to the Terms and Conditions. During the time period when Plaintiffs created their accounts, new visitors to the website were directed by the Ashley Madison homepage to identify their relationship status using a drop down menu. Attached hereto as **Exhibit B** (AVID 00000444) is a true and correct excerpted image of the drop down menu as it appeared on the homepage on July 20, 2015, which I obtained from the Internet Archive (archive.org).<sup>1</sup>

7. Next, visitors like Plaintiffs were taken to the registration page. To proceed any

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<sup>1</sup> The Internet Archive provides public access to a digital library of archived webpages. See "About the Internet Archive," Internet Archive, <https://archive.org/about/> (last visited August 26, 2016). The Internet Archive is generally viewed in the industry as a reliable source of historical web content, and in my role at Avid, I have relied on the Internet Archive to obtain information about the historical content of the Ashley Madison website.

further, they were required to register by creating a user profile with such information as a username, password, and zip code. Visitors were not asked and were not required to provide their real names.

8. Finally, during the time period when the accounts identified in **Exhibit A** were created, in order to complete the registration process and use Ashley Madison's services, visitors were required to click a button confirming that they had "read and accepted" or "read and agreed" to the Ashley Madison Terms and Conditions, which were made available on the registration page by hyperlink. As described further below, I have attached different versions of the registration form that have been used on the Website's registration page during the period when the accounts identified in **Exhibit A** were created.

9. Attached hereto as **Exhibit C** (AVID 00000433) is a true and correct image of the registration form in the form it appeared as of September 24, 2008, which I obtained from the Internet Archive (archive.org).

10. Attached hereto as **Exhibit D** (AVID 00000280) is a true and correct image of the registration form in the form it appeared as of January 29, 2010.

11. Attached hereto as **Exhibit E** (AVID 00000282) is a true and correct image of the registration form in the form it appeared on November 10, 2011.

12. Attached hereto as **Exhibit F** (AVID 00000287) is a true and correct image of the registration form in the form it appeared on October 19, 2012.

13. Attached hereto as **Exhibit G** (AVID 00000285) and **Exhibit H** (AVID 00000286) are true and correct images of proposed changes to the registration form that was in effect prior to November 14, 2012. Attached hereto as **Exhibit S** (AVID 00001226) and **Exhibit T** (AVID 00001227) are true and correct images of the registration form in the form it appeared



from November 14, 2012 to March 13, 2013. During this period, Avid used these two versions of the registration form as well as the version shown in **Exhibit F**.

14. Attached hereto as **Exhibit I** (AVID 00000288) is a true and correct image of the registration form in the form it appeared on April 18, 2013.

15. Attached hereto as **Exhibit J** (AVID 00000320) is a true and correct image of the registration form in the form it appeared on July 20, 2015.

16. The versions of the registration form depicted in **Exhibit C** (AVID 00000433), **Exhibit D** (AVID 00000280), and **Exhibit E** (AVID 00000282) each contained a check box next to the following statement: "I have read and accepted the **Terms and Conditions**." If this checkbox were unchecked by the user, the user would have been prevented from completing the registration process and setting up an account.<sup>2</sup>

#### **The Ashley Madison Terms and Conditions**

17. In each of the registration pages shown in **Exhibits C to J** and **Exhibits S and T** the phrase "Terms and Conditions" is an active, highlighted hyperlink, which, if clicked, takes visitors and users directly to the text of the Terms and Conditions. Attached hereto as **Exhibit K** (AVID 00000437) is a true and correct image of the webpage containing the Terms and Conditions as it appeared around July 2015. The Terms and Conditions were available to visitors and users, including Plaintiffs, in a similar form during the entire period that Plaintiffs used the website. As described further below, I have attached different versions of the Terms and Conditions that have been posted on the Website.

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<sup>2</sup> During the period from September 12, 2012 to October 19, 2012, the checkbox that appeared on the registration form was not checked by default. From September 12, 2012 to October 10, 2012, visitors to the website were required to check the box (and click the "Search now" button) in order to complete the registration process and set up an Ashley Madison account. From October 10, 2012 to October 19, 2012, visitors could complete the registration process by clicking the "Search now" button, but it was not necessary to check the checkbox. I understand that documents showing the dates of these changes have been produced to Plaintiffs.

18. Attached as **Exhibit L** (AVID 00000022) is a true and correct copy of the Terms and Conditions posted on the Website on September 5, 2008, which I obtained from the Internet Archive (archive.org).

19. Attached as **Exhibit M** (AVID 00000076) is a true and correct copy of the text of the Terms and Conditions posted on the Website on March 17, 2011.

20. Attached as **Exhibit N** (AVID 00000169) is a true and correct copy of the text of the Terms and Conditions posted on the Website on April 18, 2013.

21. Attached as **Exhibit O** (AVID 00000260) is a true and correct copy of the text of the Terms and Conditions posted on the Website on June 24, 2015. This version of the Terms and Conditions remained on the Website through July 2015.

22. The Ashley Madison Terms and Conditions were changed from time to time. After such changes are made, an updated version of the Terms and Conditions reflecting such changes was posted on the Website.

23. In addition to providing the Terms and Conditions at the time users (including Plaintiffs) registered and created their accounts, the most current version of the Terms and Conditions was made available to users on almost every page of the website. A hyperlink directing users to the text of the Terms and Conditions appears at the footer of the Ashley Madison website. Attached hereto as **Exhibit P** (AVID 00000431) is an excerpted image of the footer of the home page as it appeared on July 20, 2015, which I obtained from the Internet Archive (archive.org). A similar link to the Terms and Conditions appeared at the footer of almost every Ashley Madison webpage during the entire period that Plaintiffs used the website.

24. During certain periods, when users first logged onto the website after changes were made to the Terms and Conditions, they were presented with a “dialog box” notifying them

that the Terms and Conditions had been “updated,” providing them with a copy of the updated Terms and Conditions, and enabling them to agree to the updated Terms and Conditions before continuing to use the Website. Attached as **Exhibit Q** (AVID 00000340) is a true and correct copy of an image showing how the dialog box was designed to appear on the Website from April 28, 2011 to May 9, 2011. Two Plaintiffs whose most recent account was created prior to March 17, 2011 -- Steven Coward (Account Number [REDACTED]) and Matthew Lisuzzo (Account Number [REDACTED]) -- agreed to updated Terms and Conditions using this dialog box on May 1, 2011 and April 29, 2011, respectively.

25. Users also were sent a link to the Terms and Conditions when they made purchases on the Website during certain periods. These purchase receipts sent by Avid via email contained a hyperlink to the then-current Terms and Conditions. For example, attached hereto as **Exhibit R** (AVID 00000572) is a true and correct copy of the text of a purchase receipt sent to Plaintiff [REDACTED] on January 5, 2012.

#### **The Arbitration Clause and Class Action Waiver**

26. As reflected in **Exhibit M**, since March 17, 2011, the Terms and Conditions have included an arbitration clause and a class action waiver. As reflected in **Exhibit N**, since April 18, 2013, the Terms and Conditions have included a revised version of the arbitration clause and a class action waiver.

#### **Account Activity**

27. Plaintiffs who created accounts prior to March 17, 2011 continued using the website after the arbitration clause was added to the Terms and Conditions. For example,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>3</sup>

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 3rd day of November, 2016 in Toronto, Canada.



Rizwan Jiwan

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<sup>3</sup> I understand that copies of spreadsheets reflecting login and message activity for accounts [REDACTED] [REDACTED] have been produced to Plaintiffs.